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the probability that it was intended to, and did, secure an involuntary confession is increased to the degree of practically excluding any other possibility.[78] Such logic should commend itself to the legislature of New York. Furthermore, the heretofore ignored provisions of Section 1844 of the Penal Law, making it a misdemeanor to unreasonably delay a prisoner's arraignment, should be strictly enforced.[79] In this manner, the sovereign State of New York would indicate to its police that lazy, brutal, and unconscionable methods of criminal investigation will be no more tolerated in the courts of this state than they are in the Supreme Court of the United States. It is to be further hoped that the *Stein* case will be limited to its peculiar facts and that the policy of the *Malinski* and *Rochin* cases, envisioning a growing concept of "due process," will continue to be the law of the land.

SHIPOWNER'S LIABILITY FOR THE "UNSEAWORTHINESS" OF A VESSEL DUE TO AN ASSAULT BY A FELLOW CREWMEMBER

The seaman, in his position as the favored "ward of Admiralty," has historically been treated generously in compensation benefits for disabilities suffered during employment. The passage of years has in no way diminished the propensity of the courts to aid an injured seaman. Indeed, the courts' patronage has become so zealous that Judge Learned Hand apparently felt that it was time to apply the judicial brakes just short of holding the employer to be an absolute insurer of the safety of workers in his employ. In the recent case of *Jones v. Lykes Bros. S.S. Co.*,[1] the Court of Appeals for the Second Circuit refused to hold a shipowner liable to an employe for injuries sustained due to an assault by a fellow crewmember. The plaintiff and a seaman named Hunter had an argument in the ship's engine room. Upon returning to his quarters, plaintiff was viciously as-

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[78] The federal rule of evidence established in McNabb v. United States, 318 U. S. 332 (1943), modified by United States v. Mitchell, 322 U. S. 65 (1944), and clarified in Upshaw v. United States, 335 U. S. 410 (1948), recognizes that when the delay in commitment was for the sole purpose of extracting a confession, the probability of coercion is so great that an irrebuttable presumption of its presence arises. See 26 ST. JOHN'S L. REV. 351 (1952).

[79] Diligent research has failed to reveal *one* case in which a police officer was prosecuted under this section although violations of § 165 abound in the field of criminal procedure. See Bader, *Coerced Confessions and the Due Process Clause*, 15 BROOKLYN L. REV. 51, 70-71 (1948).

[1] 204 F. 2d 815 (2d Cir.), *cert. denied*, 74 Sup. Ct. 72 (1953).

saulted by Hunter. Although Hunter employed only his hands and feet, the beating sustained by Jones was so severe that he will be crippled for life. The Federal District Court, Judge Murphy presiding, found no evidence of negligence on the employer's part in hiring Hunter.[2] Judgment was granted for plaintiff, however, on the basis of a breach of the warranty of seaworthiness,[3] the court relying directly on the statements of Judge Learned Hand in *Keen v. Overseas Tankship Corp.*,[4] concerning the warranty of a shipowner to outfit a ship with a seaworthy crew. In the *Keen* case, one Keen and a cook, while returning on a launch from shore leave, engaged in a violent argument. After a scuffle on the ship's deck, the cook went below and obtained a cleaver with which he inflicted serious injuries on the plaintiff. Suit was instituted against the shipowner based on his negligence in employing a man of the cook's vicious nature. An alternate claim was based on the ship's unseaworthy state in having such a man as a member of the crew. The injured party sought to introduce evidence of the temperamental unfitness of the cook, but such evidence was excluded at the trial because plaintiff had failed to establish that the employer was chargeable with notice of the cook's dangerous behavior. Judgment was granted for the defendant as the jury failed to find that the shipowner had notice of dangerous proclivities of the assailant, prior to the assault on the plaintiff. The Court of Appeals for the Second Circuit,[5] Judge Learned Hand writing the opinion, sent the case back to the lower court for a new trial on the ground that the trial judge's instructions to the jury had been erroneous. The court stated that the owner's warranty of the competence of his crew is not dependent upon his knowledge of a defect in a member's disposition, and that proof of notice of a crewman's vile temper is not a prerequisite to recovery. The cost of insuring the temper of the crew, reasoned the court, is an expense incurred in the normal operation of a shipping line and will be eventually passed on to the shippers who use the line to transport their goods.[6] Language was used which predicated an owner's liability for an assault by a fellow employe solely on the fact that one of its crew was injured, not that the employer should have foreseen and prevented its occurrence.

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[2] 108 F. Supp. 323 (S. D. N. Y. 1952).

[3] *Id.* at 326. Limits on the warranty are discussed. The court feels that if the battery was justified or based on sufficient provocation, the owner might not be deemed liable.

[4] 194 F. 2d 515 (2d Cir.), *cert. denied,* 343 U. S. 966 (1952).

[5] *Ibid.*

[6] ". . . [T]hat is no reason why an individual seaman who has suffered because his fellow is not up to his work, must bear the loss. Substantially all maritime risks are insured, and if we must suppose that the addition of this risk will show in the premiums, in the end it will be likely also to show in freight rates; and so far as it does, the recovery will be spread among those who use the ships." *Id.* at 518.

Judge Hand, when called upon to review virtually the same factual situation in the *Jones* case,[7] refused to follow his own explicit expressions in the *Keen* case as to the *absolute* duty of a shipowner to provide a safe ship, with a crew of seaworthy disposition. The lower court's award of damages for the plaintiff was reversed and the complaint was dismissed. The *Jones* case was distinguished from the *Keen* case, primarily because in the *Jones* case no weapon was used.[8] Since there was no dangerous weapon employed, nor any warning to the shipowner of Hunter's dangerous propensities, there was no ground on which to base a shipowner's liability for providing an unseaworthy ship.

It is very difficult to find valid justification for the distinction advanced by Judge Hand. In both cases, the injury was severe. Neither case was decided on the shipowner's negligence in causing or contributing to the incident. The use of a cleaver in the one case and the absence of it in the other case appears to be the only recognizable distinction, and such distinction is tenuous at best. A person who suffers a vicious beating can be severely injured without the use of a weapon. If the shipowner is to be liable without regard to fault, the distinction should not be made to depend upon the *instrumentality* which caused the disability.

The seaman has always enjoyed greater protection as a "ward of Admiralty" than that afforded to workers engaged in other fields of employment. As early as 1823, a court allowed a seaman who became incapacitated by illness or injury a right to recover for the cost of sustenance and treatment while he was convalescing.[9] The right to maintenance and cure is granted in case of injury or illness without regard to the cause,[10] the only limitation being that where the sailor wilfully caused his own injury, recovery is denied.[11] This right granted by courts of admiralty remains effective today.[12]

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[7] Jones v. Lykes Bros. S.S. Co., 204 F. 2d 815 (2d Cir.), *cert. denied*, 74 Sup. Ct. 72 (1953).

[8] "Such a set-to seldom results in serious injury, when only fists are used, and we are to judge Hunter's disposition, not by the fact that the plaintiff broke his hip, but by what would ordinarily follow from what he did." *Id.* at 817.

[9] Harden v. Gordon, 11 Fed. Cas. 480, No. 6,047 (C. C. D. Me. 1823); see also The George, 10 Fed. Cas. 205, No. 5,329 (C. C. D. Mass. 1832); Reed v. Canfield, 20 Fed. Cas. 426, No. 11,641 (C. C. D. Mass. 1832).

[10] *See* Farrell v. United States, 336 U. S. 511, 516 (1949) (". . . [T]he master . . . must maintain and care for even the erring and careless seaman, much as a parent would a child."); The Osceola, 189 U. S. 158, 175 (1903).

[11] *See* Warren v. United States, 340 U. S. 523, 528 (1951) ("In the maritime law it has long been held that while fault of the seaman will forfeit the right to maintenance and cure, it must be some 'positively vicious conduct—such as gross negligence or willful disobedience of orders.'"); Farrell v. United States, *supra* note 10 at 516.

[12] See Aguilar v. United States, 90 F. Supp. 751 (E. D. Pa. 1950); Levenson, *Current Developments in the Field of Maintenance and Cure*, 11 NACCA L. J. 140 (1953).

In addition to maintenance and cure, indemnity for injuries caused by the owner's negligence in providing an "unseaworthy" ship has been granted.[13] This remedy was subject, however, to the defenses of the fellow-servant rule,[14] which denied recovery to an employe whose injury resulted from the negligence of a co-worker. Congress, by enactment of the Merchant Marine Act of 1920 (Jones Act)[15] increased the remedies available to an injured seaman,[16] and at the same time removed the above-mentioned common-law defense as a bar to recovery.[17] A cause of action based on the Jones Act precludes a suit under the "unseaworthiness" concept of liability, and the seaman must elect under which theory to prosecute his action.[18] This article will be limited to the discussion of the courts' interpretation of the remedy available when a shipowner breaches his duty to provide his employes with a "seaworthy" ship.[19]

Although the origin of a seaman's right to indemnity for injuries sustained where the owner provides an "unseaworthy" vessel is somewhat speculative, it is probably derived from the ancient privilege of a sailor to abandon his vessel if it was unsafe.[20] Some courts which dealt with the problem took the position that the owner was not an insurer of the crew's safety.[21] For liability to arise, the defect was required to be of such a nature as to place a person on notice of its inherent danger.[22] Other decisions based liability upon the breach of an *absolute* duty of the shipowner to provide a safe vessel for the crew.[23] This conflict was resolved in 1944 by the Supreme Court's

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[13] *See* The Osceola, *supra* note 10 at 175.

[14] Burton v. Greig, 271 Fed. 271 (5th Cir. 1921); The City of Alexandria, 17 Fed. 390 (S. D. N. Y. 1883); *see* The Osceola, *supra* note 10 at 175.

[15] 41 STAT. 988 (1920), 46 U. S. C. (1946) *passim.*

[16] Section 33 of the Jones Act [41 STAT. 1007 (1920), 46 U. S. C. § 688 (1946)] gives the seaman injured in the course of his employment a right of action for damages at law. Trial by jury is permitted and in case of death because of the injury, the right of action passes to his personal representatives. *See* The Arizona v. Anelich, 298 U. S. 110, 118, 120 (1936).

[17] Becker v. Waterman S.S. Corp., 179 F. 2d 713 (2d Cir. 1950); *see* Beadle v. Spencer, 298 U. S. 124, 128 (1936).

[18] *See* Pacific S.S. Co. v. Peterson, 278 U. S. 130, 138 (1928). *But cf.* McCarthy v. American Eastern Corp., 175 F. 2d 724 (3d Cir.), *cert. denied,* 338 U. S. 868 (1949).

[19] For a comprehensive treatment of the field of a seaman's rights where injured, see Comment, *The Tangled Seine: A Survey of Maritime Personal Injury Remedies,* 57 YALE L. J. 243 (1947).

[20] *See* The Arizona v. Anelich, *supra* note 16 at 121 n. 2.

[21] *See* The Tawmie, 80 F. 2d 792, 793 (5th Cir. 1936); Kahyis v. Arundel Corp., 3 F. Supp. 492, 495 (D. Md. 1933); The Lizzie Frank, 31 Fed. 477, 478 (S. D. Ala. 1887).

[22] Burton v. Greig, 271 Fed. 271 (5th Cir. 1921). "We understand that under the American law the shipowner . . . is not liable . . . if due care was used in furnishing the appliance and in keeping it in safe condition and repair." *Id.* at 273. *See* The Tawmie, *supra* note 21 at 793.

[23] The H. A. Scandrett, 87 F. 2d 708 (2d Cir. 1937). ". . . [T]he liability for any injuries arising out of the neglect to supply a seaworthy vessel is not

decision in *Mahnich v. Southern S.S. Co.*[24] In that case, the libellant was injured by a scaffolding which fell as a result of the parting of a defective rope. The employer proved that a safe rope was available for use, and thus sought to avoid liability on the ground that the libellant's injury was caused by the negligence of the mate in *selecting* the defective rope, rather than by the ship being in an unsafe condition. The Court, in allowing recovery to the seaman, based liability not on negligence, but on the presence of a defective appliance.[25] The breaking of the rope made the device unseaworthy, and as a consequence, the shipowner was liable for breaching his duty to provide a safe ship.[26] The case of *Seas Shipping Co. v. Sieracki*,[27] decided in 1946, clarified and extended the shipowner's liability for maintaining an unsafe place for the crew to perform its duty. Plaintiff, employed as a longshoreman by an independent contractor, was injured when a loading boom fell. The trial court [28] found no negligence on the shipowner's part as the break was caused by a defect in the manufacture of the part. The Circuit Court of Appeals [29] reversed in favor of the plaintiff, although sustaining the trial court's finding of fact, and the Supreme Court affirmed, three justices dissenting.[30] The Court then held that a shipowner's freedom from negligence does not relieve him from liability where a ship is unseaworthy.[31] Where injury results from the presence of defective equipment,[32] the owner is responsible and must provide indemnification.

Concurrent with the growth of the warranty on a ship's appli-

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dependent on the exercise of reasonable care but is absolute." *Id.* at 710. *See* The Edwin I. Morrison, 153 U. S. 199, 201 (1894).

[24] 321 U. S. 96 (1944).

[25] *Id.* at 103.

[26] See the dissent of Mr. Justice Roberts in Mahnich v. Southern S.S. Co., *supra* note 24 at 105, for a strict interpretation of what constitutes "unseaworthiness."

[27] 328 U. S. 85 (1946).

[28] Sieracki v. Seas Shipping Co., 57 F. Supp. 724 (E. D. Pa. 1944).

[29] 149 F. 2d 98 (3d Cir. 1945).

[30] The decision of the majority allowing a longshoreman, not working for the shipowner, to collect for breach of seaworthiness is attacked as an unwarranted extension of liability. Congress, in 1927, had enacted a Longshoremen's and Harbor Workers' Compensation Act, 44 STAT. 1424 (1927), 33 U. S. C. § 901 *et seq.* (1946), to provide compensation for injuries arising in the course of employment. "There would seem to be no occasion for us to be more generous than Congress has been by presenting to them [longshoremen] paid-up accident insurance policies at the expense of a vessel by which they have not been employed, and which has not failed in any duty of due care toward them." Seas Shipping Co. v. Sieracki, *supra* note 27 at 107 (dissenting opinion).

[31] *Id.* at 94.

[32] See Krey v. United States, 123 F. 2d 1008 (2d Cir. 1941), for a case holding a ship "unseaworthy" where a seaman, while the ship was at dock, slipped on the soapy floor of a shower and was injured.

ances, there arose a warranty as to the competence of the crew. A vessel was not considered seaworthy where a crew was incapable of performing its assigned duties.[33] Where a Chinese crew could not understand the commands of its Caucasian officers, the ship was deemed to be unsafe, and the owners were held responsible for the loss of life and property.[34] *The Rolph*[35] was a case in which the libellant seaman was disabled by a beating at the hands of the mate of the ship on which he was employed. It was shown that the mate was known to have a vicious disposition and that the owner had been put on notice of similar beatings administered to other members of the crew. The court, in holding for the libellant, ruled that a shipowner was under a duty to provide a master and crew which was competent to properly operate the vessel. A crew is not competent where the mate has a brutal and inhuman disposition.[36]

The courts of Admiralty, by their granting of special protection to the seaman, have placed him in the position of being a favored worker as contrasted with other categories of employes. The following hypothetical will illustrate the advantage of a seaman over a worker who has not been granted this special protection. In a factory two employes exchange blows after a dispute. In a fit of rage, one picks up a hammer and proceeds to use it on his opponent, resulting in serious injuries. Can it be said that the employer has maintained a dangerous plant? Obviously not. The plant owner, unaware of any dangerous propensities on the part of an employe, cannot be said to be negligent in causing the injury. Not being in a position to prevent the injury, he cannot be held liable for its occurrence.[37] However, where such an incident occurred on a ship, and the injuries were sustained by a seaman, recovery was permitted against the employer under the same factual situation.[38]

No evidence was found in the *Keen* case to show that the dispute was in any manner related to the performance of duties as a seaman. In the *Jones* case there was a dispute which related directly to the functioning of the ship.[39] The *cause of the dispute* should have some relevance in the granting or withholding of indemnity.

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[33] *See In re* Meyer, 74 Fed. 881, 885 (N. D. Cal. 1896); Holland v. Seven Hundred and Seventy-Five Tons of Coal, 36 Fed. 784, 787 (E. D. Wis. 1888).

[34] *In re* Pacific Mail S.S. Co., 130 Fed. 76 (9th Cir.), *cert. denied,* 195 U. S. 632 (1904).

[35] 299 Fed. 52 (9th Cir.), *cert. denied,* 266 U. S. 614 (1924).

[36] See Kyriakos v. Goulandris, 151 F. 2d 132 (2d Cir. 1945); Koehler v. Presque-Isle Transp. Co., 141 F. 2d 490 (2d Cir.), *cert. denied,* 322 U. S. 764 (1944).

[37] Recovery may be permitted under a Workmen's Compensation Law if the injuries were received in the scope of the employment. See note 49 *infra.*

[38] Keen v. Overseas Tankship Corp., 194 F. 2d 515 (2d Cir.), *cert. denied,* 343 U. S. 966 (1952).

[39] Jones found Hunter had failed to properly maintain some equipment in the engine room.

The *Jones* case, in holding that injuries alone were not sufficient to permit recovery, seems to limit strictly the *Keen* case. In view of the apparent contradiction between the cases, it may be assumed that Judge Hand decided that his own views in the *Keen* case went too far in extending an owner's liability in the case of an assault. The limitation of the grounds for recovery to the case in which a weapon is used eliminates the majority of claims based on injuries arising from an assault.[40] The purpose of the limitation may be laudable, but the criteria used are not. Either the shipowner is liable for any injury which occurs to a crewmember, without regard to the cause, or recovery should be strictly limited to an injury which could be prevented by use of reasonable care. The Supreme Court, in denying certiorari,[41] has left unresolved the apparent conflict with regard to the extent of an employer's responsibility for the "disposition" of his crew.

The doctrine of "unseaworthiness" has been overextended by the courts. It is interpreted to include longshoremen,[42] harborworkers [43] and others who are not in the employ of the shipowner.[44] Recovery has been permitted merely because a man is employed on a ship and has been injured.[45] Fault and negligence have been ignored as the

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[40] "Sailors lead a rough life and are more apt to use their fists than office employees; what will seem to sedentary and protected persons an insufficient provocation for a personal encounter, is not the measure of the 'disposition' of 'the ordinary men in the calling.'" Jones v. Lykes Bros. S.S. Co., 204 F. 2d 815, 817 (2d Cir.), *cert. denied,* 74 Sup. Ct. 72 (1953).

[41] 74 Sup. Ct. 72 (1953).

[42] Seas Shipping Co. v. Sieracki, 328 U. S. 85 (1946).

[43] Hawn v. Pope & Talbot, Inc., 198 F. 2d 800 (3d Cir. 1952) (ship's carpenter employed by an independent contractor); Capadona v. The Lake Atlin, 101 F. Supp. 851 (S. D. Cal. 1951) (oil barge employe within the class permitted recovery for breach of the warranty of "seaworthiness"). For cases applying the *Sieracki* case, *supra* note 39, to longshoremen, laborers and carpenters, see Capadona v. The Lake Atlin, *supra* at 852 n. 1.

[44] Bochantin v. Inland Waterways Corp., 96 F. Supp. 234 (E. D. Mo. 1951) (grain corporation employe recovered for the unseaworthiness of a ship). *But see* Guerrini v. United States, 167 F. 2d 352, 354 (2d Cir.), *cert. denied,* 335 U. S. 843 (1948) (An employe of an independent contractor, hired to clean the ship's tanks and boilers, was injured by falling into a hold after slipping on a grease spot. The court in denying a breach of seaworthiness as to plaintiff, said, "Yet we should hesitate to read the decision [*Sieracki* case, *supra* note 42] as intended to extend the protection of what amounts to a warranty of seaworthiness to all workmen upon a ship, however much their relation to the employer is unlike the early paternalistic status of master and crew, many of whose features have vestigially persisted to the present time. At any rate it is proper, if such an innovation is to be made, that it should await the sanction of the Supreme Court in the exercise of supplying the inadequacies of the past." *Id.* at 354); Martini v. United States, 192 F. 2d 649 (2d Cir. 1951), *cert. denied,* 343 U. S. 926 (1952).

[45] Dayton v. Midland S.S. Lines, Inc., 110 F. Supp. 418 (W. D. N. Y. 1953). Plaintiff was injured when he came into contact with a pipe vise which was part of the permanent structure and plainly visible. "Irrespective of any unseaworthiness of the vessel, or any defects of the ways, works and ma-

basis of liability.[46] If injury alone is to be sufficient basis for recovery, then the change should be accomplished by congressional action rather than judicial legislation. Congress, through the Jones Act, uses negligence as the determinant of liability.[47] States have provided for recovery, without regard to fault, by the enactment of Workmen's Compensation Laws.[48] Injury in the scope of employment entitles the worker to a designated award if the employment is covered.[49] The New York Workmen's Compensation Act has been construed to permit recovery where disability was occasioned by an assault by a fellow worker.[50] Congress has not seen fit to extend the statutory remedy of the Jones Act to the situation where the injury was not the fault of the employer. If it is in the national interest to base recovery solely upon injury, Congress is certainly in a better position to make that determination than the judiciary.

Today, the seaman has, by virtue of the historic preference granted by Admiralty, greater rights than employes in other occupations. He is entitled to maintenance and cure in the event of sickness or accidental injury.[51] This right continues as long as treatment will be of benefit to the seaman.[52] In addition, he may recover damages if he has been injured because of the employer's negligence or failure to maintain a "seaworthy" ship. Is the seaman "poor" and "oppressed" to the extent of according him greater rights than

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chinery, it is believed, under the authorities . . . some liability must be charged against the defendant. . . . As a matter of fact, the injuries, in the opinion of the court, were caused by the negligence of the plaintiff." *Id.* at 419-420.

[46] See Mahnich v. Southern S.S. Co., 321 U. S. 96 (1944); Seas Shipping Co. v. Sieracki, *supra* note 42.

[47] "But damages may be recovered under the Jones Act only for negligence." De Zon v. American President Lines, Ltd., 318 U. S. 660, 671 (1943). ". . . I agree further that the Jones Act is not a workmen's compensation act and does not impose liability without fault. . . ." *Id.* at 672 (dissenting opinion); Engel v. Davenport, 271 U. S. 33, 36 (1926).

[48] N. Y. WORKMEN'S COMP. LAW § 10 ("Every employer subject to this chapter shall . . . secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment *without regard to fault as a cause of the injury. . . .*") (emphasis added); MICH. COMP. LAWS §§ 412.1-412.2 (1948); PA. STAT. ANN. tit. 77, § 41 (Purdon, 1952).

[49] N. Y. WORKMEN'S COMP. LAW § 15; MICH. COMP. LAWS §§ 412.9-412.12 (1948); PA. STAT. ANN. tit. 77, §§ 511-513 (Purdon, 1952).

[50] Heitz v. Ruppert, 218 N. Y. 148, 112 N. E. 750 (1916); Katz v. Reissman Rothman Corp., 261 App. Div. 862, 24 N. Y. S. 2d 807 (3d Dep't 1941) (Claimant was attacked by a co-worker who apparently was jealous of attentions paid to claimant by a third co-worker of the opposite sex. The claimant recovered as the injury was deemed to have arisen in the course of the employment.); Levy v. World-Telegram, 259 App. Div. 943, 19 N. Y. S. 2d 890 (3d Dep't 1940), *aff'd mem.*, 285 N. Y. 533, 32 N. E. 2d 827 (1941).

[51] See note 12 *supra*.

[52] Calmar S.S. Corp. v. Taylor, 92 F. 2d 84 (3d Cir. 1937), *cert. denied*, 303 U. S. 643 (1938). *But cf.* Farrell v. United States, 336 U. S. 511 (1949) (maintenance and cure for life denied by a 5 to 4 decision).

a worker who labors on land? This problem is of importance not only to the seaman and the shipowner but to the public at large, because it is the public who ultimately will bear the burden of taxation necessary to finance the large subsidies paid to maintain the shipping industry. It is to be hoped that by focusing attention on the problem, a solution satisfactory to all parties may be reached.

AIR CARRIERS—NOTICE OF CLAIM AND TIME FOR SUIT LIMITATIONS

Introduction

No action may be maintained for injury to, or death of, a passenger, unless notice of claim in writing is presented to the general office of the carrier within ninety days following the occurrence of the event giving rise thereto, and unless the action is actually commenced within one year after such occurrence.

This is a typical clause utilized by many air carriers [1] for the alleged purpose of protecting themselves from fraudulent claims. The thought is that prompt notice to the carrier permits an investigation as to the nature of an injured passenger's claim. The fraudulently disposed passenger—one whose injuries seem to multiply with the passage of time—is thus discouraged from capitalizing on the staleness of his claim.

The bona fide passenger, however, is likewise subject to the provision. His is a helpless plight, for in most instances, he is not even aware of the existence of such a condition to the carrier's liability. He would naturally assume that the pertinent statute of limitations constitutes the only yardstick as to the time within which he may move against the carrier to remedy his hurts.

The manner by which the carrier renders this clause operative is manifestly unfair to passengers. It is the purpose of this note to examine the inequity of this practice with a view of challenging its validity.

The air carrier of passengers is the primary target, although other common carriers must be considered for historical purposes, and by way of analogy. Personal injury claims of passengers will be

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[1] See McKay, *Airline Tariff Provisions as a Bar to Actions for Personal Injuries*, 18 GEO. WASH. L. REV. 160 (1950); 1953 U. S. & CAN. AVIATION REP. 198, 199 (C. A. B. Docket No. 6149) (The Civil Aeronautics Board is investigating the reasonableness and lawfulness of such a provision.).